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Attorneys for Plaintiff,
Carrie Couser

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

**CARRIE COUSER;
INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS
SIMILARLY SITUATED,**

Plaintiff,

v.

**COAST TO COAST GRAND
GETAWAYS, LLC; and,
GRAND INCENTIVES, INC.**

Defendants.

**Case No.: EDCV 14-722 MMM
(DTBx)**

CLASS ACTION

**FIRST AMENDED
COMPLAINT
FOR DAMAGES AND
INJUNCTIVE RELIEF
PURSUANT TO THE
TELEPHONE CONSUMER
PROTECTION ACT, 47 U.S.C.
§227, ET SEQ.**

JURY TRIAL DEMANDED

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INTRODUCTION

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1. CARRIE COUSER (“Plaintiff”) brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of COAST TO COAST GRAND GETAWAYS, LLC (individually as “CCGG” or collectively as “Defendants”) and GRAND INCENTIVES, INC. (individually as “Grand Incentives” or collectively as “Defendants”) in negligently contacting Plaintiff on Plaintiff’s cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”), thereby invading Plaintiff’s privacy. Plaintiff alleges as follows upon personal knowledge as to herself and her own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by their attorneys.
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2. The TCPA was designed to prevent calls like the ones described within this complaint, and to protect the privacy of citizens like Plaintiff. “Voluminous consumer complaints about abuses of telephone technology – for example, computerized calls dispatched to private homes – prompted Congress to pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).
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3. In enacting the TCPA, Congress intended to give consumers a choice as to how creditors and telemarketers may call them, and made specific findings that “[t]echnologies that might allow consumers to avoid receiving such calls are not universally available, are costly, are unlikely to be enforced, or place an inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. Toward this end, Congress found that:

[b]anning such automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call or when such calls are necessary in an emergency situation affecting the health and safety of the consumer, is the only effective means of protecting telephone consumers from this nuisance and privacy

invasion.

Id. at § 12; *see also Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL 3292838, at* 4 (N.D. Ill. Aug. 10, 2012) (citing Congressional findings on TCPA's purpose).

4. Congress also specifically found that "the evidence presented to the Congress indicates that automated or prerecorded calls are a nuisance and an invasion of privacy, regardless of the type of call...." *Id.* at §§ 12-13. *See also, Mims*, 132 S. Ct. at 744.
5. As Judge Easterbrook of the Seventh Circuit recently explained in a TCPA case regarding calls to a non-debtor similar to this one:

The Telephone Consumer Protection Act ... is well known for its provisions limiting junk-fax transmissions. A less-litigated part of the Act curtails the use of automated dialers and prerecorded messages to cell phones, whose subscribers often are billed by the minute as soon as the call is answered—and routing a call to voicemail counts as answering the call. An automated call to a landline phone can be an annoyance; an automated call to a cell phone adds expense to annoyance.

Soppet v. Enhanced Recovery Co., LLC, 679 F.3d 637, 638 (7th Cir. 2012).

6. The Ninth Circuit recently affirmed certification of a TCPA class action remarkably similar to this one in *Meyer v. Portfolio Recovery Associates, LLC*, ___ F.3d ___, 2012 WL 4840814 (9th Cir. Oct. 12, 2012).

JURISDICTION AND VENUE

7. This Court has federal question jurisdiction because this case arises out of violation of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740 (2012).
8. Venue is proper in the United States District Court for the Central District of California pursuant to 28 U.S.C. § 1391 for the following reasons: (i)

1 Plaintiff resides in the City of Mira Loma, County of Riverside, State of
 2 California which is within this judicial district; (ii) the conduct complained
 3 of herein occurred within this judicial district; and, (iii) many of the acts and
 4 transactions giving rise to this action occurred in this district because
 5 Defendants:

6 (a) are authorized to conduct business in this district and have
 7 intentionally availed themselves of the laws and markets
 8 within this district;

9 (b) do substantial business within this district;

10 (c) are subject to personal jurisdiction in this district because they
 11 have availed itself of the laws and markets within this district;
 12 and,

13 (d) the harm to Plaintiff occurred within this district.

14 **PARTIES**

15 9. Plaintiff is, and at all times mentioned herein was, a citizen and resident of
 16 the City of Mira Loma, County of Riverside, State of California. Plaintiff is,
 17 and at all times mentioned herein was, a “person” as defined by 47 U.S.C. §
 18 153 (39).

19 10. Plaintiff is informed and believes, and thereon alleges, that Defendant
 20 CCGG is, and at all times mentioned herein was, a corporation whose
 21 primary corporate address is in the State of Florida, with its principle place
 22 of business located at 11219 Marigold Drive, Bradenton, Florida 34202.
 23 Defendant CCGG is, and at all times mentioned herein was, a corporation
 24 and is a “person,” as defined by 47 U.S.C. § 153 (39). Defendant CCGG is a
 25 travel service company that sells travel club memberships and travel
 26 packages to consumers nationwide. Plaintiff alleges that at all times relevant
 27 herein Defendant CCGG conducted business in the State of California and in
 28 the County of Riverside, and within this judicial district.

11. Plaintiff is informed and believes, and thereon alleges, that Defendant Grand Incentives is corporation whose primary corporate address is in the state of Florida with its principle place of business located at 7560 Commerce Court, Sarasota, Florida 34243. Defendant Grand Incentives is, and at all times mentioned herein was, a corporation and is a “person” as defined by 47 U.S.C. § 153 (39). Defendant Grand Incentives is a travel incentive company that other companies may use to provide vacation incentives for their employees. Plaintiff alleges that at all times relevant herein, Defendant Grand Incentives conducted business in the State of California, in the County of Riverside, and within this jurisdictional district.

FACTUAL ALLEGATIONS

12. At all times relevant, Plaintiff was a citizen of the State of California. Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153 (39).

13. Defendants were, and at all times mentioned herein were, Florida corporations and “persons,” as defined by 47 U.S.C. § 153 (39).

14. At all times relevant Defendants conducted business in the State of California and in the County of Riverside, within this judicial district.

15. Defendants utilize bulk SPAM text messaging, or SMS marketing, to send unsolicited text messages, marketing and advertising Defendants’ travel package trips.

16. On or about February 19, 2014, at approximately 06:41 a.m. (PST), Defendants sent an unsolicited text message to Plaintiff’s cellular telephone ending in “4164.” This text message, read:

“ND_DIGIT[10]@m
essaging.sprint.pc
s.com>”@mail.tma
il.com // Limited

time to get your
comp trip for 2:
1650”209”4409

17. Defendants used SMS¹ “4129” to send this unsolicited text message to Plaintiff’s cellular telephone.

18. Plaintiff was at no time given an option to “opt-out” of receiving future unsolicited text messages from Defendants.

19. At no time did Plaintiff provide Plaintiff’s cellular phone number to Defendants through any medium, nor did Plaintiff consent to receive such an unsolicited text message.

20. Plaintiff has never signed-up for, and has never used, Defendants’ services or products, and has never had any form of business relationship with Defendants.

21. Through the unsolicited SPAM text message, Defendants contacted Plaintiff on Plaintiff’s cellular telephone regarding an unsolicited service via an “automatic telephone dialing system,” (“ATDS”) as defined by 47 U.S.C. § 227(a)(1) and prohibited by 47 U.S.C. § 227(b)(1)(A).

22. This ATDS has the capacity to store or produce telephone numbers to be called, using a random or sequential number generator.

23. The telephone number Defendants called was assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

24. This text message constituted a call that was not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).

¹ The term “Short Message Service” or “SMS” is a messaging system that allows cellular telephone subscribers to use their cellular telephones to send and receive short text messages.

1 25.Plaintiff did not provide Defendants or its agent prior express consent to
2 receive text messages, including unsolicited text messages, to her cellular
3 telephone, pursuant to 47 U.S.C. § 227 (b)(1)(A).

4 26.The unsolicited text message by Defendants, or their agents, violated 47
5 U.S.C. § 227(b)(1).

6 **CLASS ACTION ALLEGATIONS**

7 27.Plaintiff brings this action on behalf of herself and on behalf of all others
8 similarly situated (“the Class”).

9 28.Plaintiff represents, and is a member of the Class, consisting of:

10 All persons within the United States who were sent a text
11 message substantially similar or identical to the text
12 message described in Paragraph 15 of the Complaint by
13 Defendant and/or its agent within the four years prior to
the filing of the Complaint.

14 29.Defendants and their employees or agents are excluded from the Class.
15 Plaintiff does not know the number of members in the Class, but believes the
16 Class members number in the tens of thousands, if not more. Thus, this
17 matter should be certified as a Class action to assist in the expeditious
18 litigation of this matter.

19 30.Plaintiff and members of the Class were harmed by the acts of Defendant in
20 at least the following ways: Defendant, either directly or through its agents,
21 illegally contacted Plaintiff and the Class members via their cellular
22 telephones by using an unsolicited SPAM text message/s, thereby causing
23 Plaintiff and the Class members to incur certain cellular telephone charges or
24 reduce cellular telephone time for which Plaintiff and the Class members
25 previously paid, and invading the privacy of said Plaintiff and the Class
26 members. Plaintiff and the Class members were damaged thereby.

27 31.This suit seeks only damages and injunctive relief for recovery of economic
28 injury on behalf of the Class, and it expressly is not intended to request any

1 recovery for personal injury and claims related thereto. Plaintiff reserves the
2 right to modify or expand the Class definition to seek recovery on behalf of
3 additional persons as warranted as facts are learned in further investigation
4 and discovery.

5 32. The joinder of the Class members is impractical and the disposition of their
6 claims in the Class action will provide substantial benefits both to the parties
7 and to the court. The Class can be identified through Defendants' records or
8 Defendants' agents' records.

9 33. There is a well-defined community of interest in the questions of law and
10 fact involved affecting the parties to be represented. The questions of law
11 and fact to the Class predominate over questions which may affect
12 individual Class members, including, but not limited to, the following:

- 13 a) Whether, within the four years prior to the filing of this Complaint,
14 Defendants or their agents sent any unsolicited text message/s (other
15 than a message made for emergency purposes or made with the prior
16 express consent of the called party) to a Class member using any
17 automatic dialing and/or SMS texting system to any telephone number
18 assigned to a cellular phone service;
- 19 b) Whether Plaintiff and the Class members were damaged thereby, and
20 the extent of damages for such violation; and
- 21 c) Whether Defendants and their agents should be enjoined from
22 engaging in such conduct in the future.
- 23 d) Whether Plaintiff and the Class are entitled to any other relief.

24 34. As a person who received at least one unsolicited SPAM text message
25 without Plaintiff's prior express consent, Plaintiff is asserting claims that are
26 typical of the Class. Plaintiff will fairly and adequately represent and protect
27 the interests of the Class in that Plaintiff has no interests antagonistic to any
28 member of the Class.

1 35.Plaintiff and the members of the Class have all suffered irreparable harm as
2 a result of the Defendants' unlawful and wrongful conduct. Absent a class
3 action, the Class will continue to face the potential for irreparable harm. In
4 addition, these violations of law will be allowed to proceed without remedy
5 and Defendants will likely continue such illegal conduct. Because of the
6 size of the individual Class member's claims, few, if any, Class members
7 could afford to seek legal redress for the wrongs complained of herein.

8 36.Plaintiff has retained counsel experienced in handling class action claims
9 and claims involving violations of the Telephone Consumer Protection Act.

10 37.A class action is a superior method for the fair and efficient adjudication of
11 this controversy. Class-wide damages are essential to induce Defendants to
12 comply with federal and California law. The interest of Class members in
13 individually controlling the prosecution of separate claims against Defendant
14 is small because the maximum statutory damages in an individual action for
15 violation of privacy are minimal. Management of these claims is likely to
16 present significantly fewer difficulties than those presented in many class
17 claims.

18 38.Defendants have acted on grounds generally applicable to the Class, thereby
19 making appropriate final injunctive relief and corresponding declaratory
20 relief with respect to the Class as a whole.

21 **FIRST CAUSE OF ACTION**

22 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**

23 **47 U.S.C. § 227 ET SEQ.**

24 39.Plaintiff incorporates by reference all of the above paragraphs of this
25 Complaint as though fully stated herein.

26 40.The foregoing acts and omissions of Defendants constitute numerous and
27 multiple negligent violations of the TCPA, including but not limited to each
28 and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

1 41.As a result of Defendants' negligent violations of 47 U.S.C. § 227 et seq.,
2 Plaintiff and The Class are entitled to an award of \$500.00 in statutory
3 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

4 42.Plaintiff and the Class are also entitled to and seek injunctive relief
5 prohibiting such conduct in the future.

6 **SECOND CAUSE OF ACTION**

7 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE**

8 **TELEPHONE CONSUMER PROTECTION ACT**

9 **47 U.S.C. § 227 ET SEQ.**

10 43.Plaintiff incorporates by reference all of the above paragraphs of this
11 Complaint as though fully stated herein.

12 44.The foregoing acts and omissions of Defendants constitute numerous and
13 multiple knowing and/or willful violations of the TCPA, including but not
14 limited to each and every one of the above-cited provisions of 47 U.S.C. §
15 227 et seq.

16 45.As a result of Defendants' knowing and/or willful violations of 47 U.S.C. §
17 227 et seq., Plaintiff and The Class are entitled to an award of \$1,500.00 in
18 statutory damages, for each and every violation, pursuant to 47 U.S.C. §
19 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

20 46.Plaintiff and the Class are also entitled to and seek injunctive relief
21 prohibiting such conduct in the future.

22 **PRAYER FOR RELIEF**

23 Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and the Class
24 members the following relief against Defendants:

25 **FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF**

26 **THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- 27 • As a result of Defendants' negligent violations of 47 U.S.C. § 227(b)(1),
28 Plaintiff seeks for herself and each Class member \$500.00 in statutory

damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

**SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL VIOLATIONS OF
THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- As a result of Defendants' knowing and/or willful violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each Class member \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

TRIAL BY JURY

47. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: June 11, 2014

Respectfully submitted,

KAZEROUNI LAW GROUP, APC

By: /s/Gouya Ranekouhi
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